Re Cheong Ah Moi; ex p CNLT (Far East) Bhd and another suit

HIGH COURT (KUALA LUMPUR) — BANKRUPTCIES NO 29–298 OF 1998 AND 29–299 OF 1998
JEFFREY TAN J
14 MARCH 2000

Bankruptcy *— Notice — Substituted service — Whether failure to specify newspaper in which orders were to be published renders order not in order*

The bankruptcy notices against the judgment debtors were served on them by way of substituted service. Counsel contended that the orders for substituted service were not in order as they failed to specify the newspaper in which the orders were to be published and applied to have them set aside. The senior assistant registrar dismissed the judgment debtor's application, and hence these appeals.

Held, dismissing the appeal with costs:

(1) In making an order for substituted service, the primary consideration of the court is how the matter can best be brought to the personal attention of the person in question (see p 863F); *Aw Chen v Johannes Koplan* [1969] 2 MLJ 190 followed.

(2) In the present case, the senior assistant registrar had ordered substituted service of the bankruptcy notices and creditor's petition to be effected by posting copies of the notices on the notice board of the High Court as well as on a conspicuous part of a premises which was the last known address of the judgment debtor, and by advertising in any issue of any daily newspaper. As such, the postings and advertisement in the Star Publications (a daily newspaper), all done in accordance with the orders for substituted service, was good and sufficient service. The orders were valid and binding and it was plainly futile to contend that the orders were not in order (see p 864A–C).

[Bahasa Malaysia summary

Notis kebankrapan telah disampaikan kepada penghutang kehakiman dengan cara penyampaian ganti. Peguam menegaskan bahawa perintah penyampaian ganti tidak teratur kerana mereka gagal menentukan suratkhabar yang mana perintah-perintah tersebut hendak diterbitkan dan memohon baginya diketepikan. Penolong kanan pendaftar menolak permohonan penghutang kehakiman, maka rayuan-rayuan ini.

Diputuskan, menolak rayuan tersebut dengan kos:

(1) Dalam membuat perintah penyampaian ganti, pertimbangan utama mahkamah adalah bagaimana perkara tersebut dapat

dibawa kepada perhatian peribadi orang berkenaan (lihat ms 863F); *Aw Chen v Johannes Koplan* [1969] 2 MLJ 190 diikut. A

(2) Dalam kes ini, penolong kanan pendaftar telah mengarahkan penyampaian ganti notis kebankrapan petisyen pemiutang dilaksanakan dengan menampalkan salinan notis-notis pada papan kenyataan Mahkamah Tinggi dan juga pada bahagian yang mudah dilihat di premis alamat terakhir yang diketahui penghutang kehakiman, dan dengan menerbitkan iklan dalam mana-mana isu mana-mana akhbar harian. Oleh itu, penampalan notis dan iklan di Star Publications (satu akhbar harian), semuanya dilakukan menurut perintah penyampaian ganti, merupakan penyampaian yang baik dan mencukupi. Perintah-perintah tersebut sah dan mengikat dan ia jelas sia-sia untuk mempertikaikan bahawa perintah-perintah tersebut adalah tidak teratur (lihat ms 864A–C).] B C

Notes D

For cases on substitued service, see 1 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1786–1790.

Cases referred to E

Aw Chen v Johannes Koplan [1969] 2 MLJ 190 (folld)

Development & Commercial Bank Bhd v Aspatra Corp Sdn Bhd & Anor and another appeal [1995] 3 MLJ 472 (refd)

Low Mun v Chung Khiaw Bank Ltd [1988] 1 MLJ 263 (refd)

S Nirmala a/p Muthiah Selvarajah t/a Shamin Properties, Re; ex p The New Straits Times Press (M) Bhd [1988] 2 MLJ 616 (refd) F

Legislation referred to

Bankruptcy Rules 1969 rr 97, 109, 110

Faizal Abu Bakar (Bala & Co) for the appellants. G

K Maniam (Skrine & Co) for the respondent.

Jeffrey Tan J: These are two similar appeals — to judge in chambers, by two judgment debtors (the abovenamed Cheong Ah Moi and See Wee Hong) against the decision of 23 November 1999 of the learned senior assistant registrar ('SAR') dismissing their respective applications to set aside the receiving order and adjudication order made by the learned SAR against them on 20 July 1999 — heard together on the application of the parties. H

Both appeals arose from the same set of facts. On 3 October 1997, in Johor Bahru High Court suit no 22–208–1994, Mohd Ghazali bin Mohd Yusoff J ordered the defendants (namely the abovenamed Cheong Ah Moi, See Wee Hong and two others) to pay the plaintiff (namely the abovenamed CNLT (Far East) Bhd) the sum of RM478,118.49 together with interest at I

A the rate of 8% pa from 15 June 1994 to the date of satisfaction. In these proceedings, bankruptcy notices were issued against Cheong Ah Moi and See Wee Hong on 24 March 1998, and creditor's petitions were presented against Cheong Ah Moi and See Wee Hong on 13 October 1998. All bankruptcy notices and creditor's petitions were served respectively on Cheong Ah Moi and See Wee Hong by way of substituted service.

B Mr Faizal Abu Bakar contended for the judgment debtors that the orders for substituted service of the bankruptcy notice or creditor's petition, were not in order ('tidak teratur, tidak sempurna'). The orders for substituted service failed to specify the newspaper '... Walau BN dan Petition ada diiklankan, tetapi tidak diiklankan dalam surat khabar Cina.' C Mr Maniam for CNLT riposted however that service was effected in accordance with the orders for substituted service, and that there was no requirement for the publication of notices to be in vernacular newspapers.

A bankruptcy notice is served in the like manner as the service of a creditor's petition; r 97 of the Bankruptcy Rules 1969 (the 'Rules') provides:

D

> A bankruptcy notice shall be served and service thereof shall be proved in the like manner as is by these rules prescribed for the service of a creditor's petition.

The Rules prescribe that a bankruptcy notice or creditor's petition shall be E personally served, by delivering a sealed copy of the bankruptcy notice or creditor's petition to the debtor (r 109). However, 'if a court is satisfied by affidavit or other evidence on oath that prompt personal service cannot be effected because the debtor is keeping out of the way to avoid service of the petition or any legal process or for any other cause it may order substituted service to be effected in such manner as it thinks fit' (r 110).

F In determining whether or not to make an order for substituted service, 'the primary consideration which weighs with the court is as to how the matter can best be brought to the personal attention of the person in question' (*Aw Chen v Johannes Koplan* [1969] 2 MLJ 190 per Chang Min Tat J, as he then was). 'Under r 110 read with r 97 ... the Bankruptcy Court has a wide discretion to order the manner in which the substituted service G should be effected' (*Low Mun v Chung Khiaw Bank Ltd* [1988] 1 MLJ 263 per Mohd Azmi SCJ). 'Substituted service may take the form of service by post addressed to the [debtor] at a specified address or by service on some person other than the [debtor] or by advertisement in a newspaper' (*Halsbury's Laws of Malaysia* Vol 1, para 10.2-050). And the order for H substituted service 'can only be challenged as regards its validity by the only way of having it set aside by proceedings instituted for the very purpose ... It cannot be challenged thus collaterally in any proceedings as regards its validity ...' (*Development & Commercial Bank Bhd v Aspatra Corp Sdn Bhd & Anor and another appeal* [1995] 3 MLJ 472 per Peh Swee Chin FCJ).

In the present case, the learned SAR ordered service of the bankruptcy I notices, creditor's petitions and orders for substituted service to be effected by posting copies of the bankruptcy notices and creditor's petitions on the notice board of the High Court, Muar, and also on a conspicuous part of

premises known as 128 & 129, Jalan Dato' Wan Idris, Taman Miri, Batu Pahat, 83000 Johore Darul Taksim, the last known address of the judgment debtors, and by advertising the bankruptcy notices and creditor's petitions 'in any one issue of any daily newspaper'. Unlike *Re S Nirmala a/p Muthiah Selvarajah t/a Shamin Properties; ex p The New Straits Times Press (M) Bhd* [1988] 2 MLJ 616, it was not specifically ordered that the bankruptcy notices and creditor's petitions be advertised in a vernacular newspaper. Both could be advertised 'in any one issue of any daily newspaper'. And according to the orders for substituted service, the posting and advertisement of the bankruptcy notices and creditor's petitions 'in any one issue of any daily newspaper' shall be deemed good and sufficient service. Consequently, the postings, and the advertisements in the Star Publications (a daily newspaper), all done in accordance with the orders for substituted service, was good and sufficient service. All orders say so. In any event, those orders are still valid and binding, and it is plainly futile to contend that the orders were not in order. That contention is really milk and water.

With respect, the learned SAR had a discretion to order or not the advertisement of the matter in a vernacular newspaper. Both judgment debtors, admittedly, were of Chinese descent. But there was no rule — *Re S Nirmala* did not propose so — to the effect that any substituted service to be effected by advertisement in a newspaper, must be effected, because of the ethnic background of the person concerned, by advertisement in a vernacular newspaper. *Re S Nirmala* was but an instance where on the facts and circumstances of the case the court thought it fit to order advertisement in a vernacular newspaper. In the present case, the learned SAR who had the same wide discretion to order the manner in which the substituted service should be effected, thought it fit, to order advertisement of the bankruptcy notices and creditor's petitions 'in any one issue of any daily newspaper'. Maybe a newspaper ought to have been specified, but without proceedings instituted for the very purpose of challenging its validity, the orders for substituted service 'cannot be challenged ... collaterally in [these appeals to judge in chambers]' (*Development & Commercial Bank Bhd v Aspatra Corp Sdn Bhd & Anor*). Both appeals cannot succeed, and for the reasons given herein, are dismissed with costs.

Appeal dismissed with costs.

Reported by Anitha MI Raman

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